

PROXY VOTING IN CANADA NEEDS MODERNIZATION

Posted on February 22, 2015

Categories: [Insights](#), [Publications](#)

On January 29, 2015, the Canadian Securities Administrators (CSA) released [Staff Notice 54-303 Progress Report on Review of the Proxy Voting Infrastructure](#) (the "Report"), detailing the progress the CSA has made in its review of the proxy voting infrastructure and outlining the next steps for reform. The Report confirms that the current proxy voting infrastructure is fragmented and needs to be modernized and improved. As previously discussed in our [August 2013 bulletin](#), the CSA issued [CSA Consultation Paper 54-401](#) to seek input from market participants on Canadian proxy voting infrastructure (the Consultation Paper). The Consultation Paper described a number of concerns that have been identified with the current system and noted that issuers and investors have expressed a lack of confidence in the reliability of the proxy voting infrastructure. It sought feedback from market participants on a proposed approach to address these concerns regarding the integrity and reliability of the proxy voting infrastructure.

The CSA received 32 comment letters from various market participants during the comment period. The CSA also sought feedback through roundtables held by various securities regulators, including the British Columbia Securities Commission and the Ontario Securities Commission, between January and March 2014. The following were the key themes from the comment letters and roundtables:

- securities regulators need to take a leadership role in reviewing the accuracy of vote reconciliation because no single market participant or set of market participants is able to access all of the information used for vote reconciliation; and
- over-voting is occurring, indicating that vote reconciliation is not always occurring accurately; however, there was no consensus either about the causes or about how to solve the problem.

Following the comment letter and roundtable process, the CSA undertook the following initiatives to evaluate vote reconciliation:

- the CSA conducted a qualitative review of six uncontested, uncontentious shareholder meetings that were held in 2014; and
- a technical working group was formed with representatives from the key parties in the proxy voting infrastructure to share information about their respective operational processes, to identify potential gaps in the meeting vote reconciliation process, and to discuss possible solutions to the gaps.

The Report identifies five key improvements that need to be made to the current proxy voting infrastructure:

- modernizing how meeting tabulators receive omnibus proxies;
- ensuring the accuracy and completeness of vote entitlement information in omnibus proxies;
- enabling intermediaries to find out their official vote entitlement for a meeting;
- increasing consistency in how tabulators reconcile proxy votes to official vote entitlements; and
- establishing communication between meeting tabulators and intermediaries about whether proxy votes are accepted, rejected or pro-rated.

For the 2015 proxy season, the CSA suggests all entities that play key roles in vote reconciliation should assess their meeting voting reconciliation process to identify and implement any immediate steps they can take to improve the accuracy and reliability of vote reconciliation. The CSA also intends to review in 2015 one or more proxy contests that have occurred to determine if there are any vote reconciliation issues that are specific to proxy contests.

For the 2016 proxy season, the CSA is directing the key entities that engage in vote reconciliation to work collectively to develop appropriate industry protocols for meeting vote reconciliation. The protocols would, at a minimum, address the five key improvements identified in the Report.

by Marina Tran, Student-at-Law

For more information please contact any member of [*McMillan's Capital Markets Group*](#).

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

© McMillan LLP 2015